

REMARKS

The Office action of December 14, 2004 presents the examination of claims 1-5. Claims 1-3 are amended herein and new claims 6 and 7 are added. Therefore, claims 1-7 are presently pending.

Amendment to the specification

The specification is amended to insert the address of the depository in which biological samples have been deposited in connection with the present application..

Support for new claims

New claim 6 finds support in the specification at, e.g. paragraphs 17 and 19. New claim 7 finds support in the specification at, e.g. paragraph 23.

Rejection under 35 U.S.C. § 101

Claims 1-5 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner asserts that, "The cDNA, as claimed, has the same characteristics and utility as that found in nature and therefore does not constitute patentable subject matter."

The Examiner incorrectly characterizes a cDNA as a naturally occurring material. While it is true that a retrovirus or

transposable element may generate a naturally occurring cDNA, such is not the case for antibody genes. The "hand of man" is reflected in the original claim language by the term cDNA, which is a material that is manufactured in a test tube, not a natural product in the present instance.

Notwithstanding this, Applicants have amended the claims to recite that the cDNA is "isolated" so as to advance prosecution of the application.

Rejection under 35 U.S.C. § 112, first paragraph

The specification is objected to and claims 4 and 5 are rejected under 35 U.S.C. § 112, first paragraph, for alleged failure of the specification to provide enabling disclosure of the claimed invention. In particular, the Examiner deems it necessary that Applicants attest to deposits of certain microorganisms made under the terms and conditions of the Budapest Treaty.

The Declaration required by the Examiner is attached hereto. Accordingly, the instant rejection is overcome.

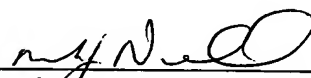
The present application well-describes and claims patentable subject matter. The favorable action of allowance of the pending claims and passage of the application to issue is respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Mark J. Nuell (Reg. No. 36,623) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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By 
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Attachment(s): Declaration regarding Deposit of Microorganisms